Opinion filed June 22, 2017

In The

Eleventh Court of Appeals

No. 11-15-00056-CV

EARNIE L. RANDELL, Appellant

V.

JEFFERY B. GALBREATH, INDIVIDUALLY AND D/B/A GALBREATH LAW FIRM, AND FREDERICK DUNBAR, Appellees

On Appeal from the 350th District Court
Taylor County, Texas
Trial Court Cause No. 10376-D

M E M O R A N D U M O P I N I O N

After Earnie L. Randell became dissatisfied with the legal services provided by his former lawyers, including Jeffery B. Galbreath and Frederick Dunbar, he sued them for breach of contract, negligence, and other causes of action. Galbreath and Dunbar answered and moved for summary judgment on traditional grounds on their affirmative defenses of release and actual or apparent authority. They asserted that Randell had authorized another lawyer, Donald MacPhail, to settle Randell's claims

with them and to sign a Release and Compromise Agreement (the Release) on Randell's behalf. After a hearing, the trial court granted Galbreath and Dunbar's traditional motion for summary judgment and later severed Randell's claims against Galbreath and Dunbar from the original cause.

On appeal, Randell asserts that the trial court erred when it granted summary judgment in Galbreath's and Dunbar's favor for two reasons. First, he claims that he had raised genuine issues of material fact on whether he signed the Release. Second, he argues that the trial court could not rule on a ground that was not advanced in the summary judgment motion. We affirm.

I. *Background Information*

While on the job in December 2005, Randell suffered injuries when his vehicle was struck by a bus, and he incurred significant medical expenses from two surgeries. He retained Galbreath and Dunbar to represent him in a personal injury lawsuit against the driver and the owner of the bus. Galbreath and Dunbar negotiated a proposed settlement of Randell's suit for $700,000 and sought his permission to settle the suit. Randell's contract with his lawyers provided that their contingency fee was forty percent of the "amount recovered" and that Randell had to pay all incurred expenses from his share of the recovery. Randell authorized the settlement, agreed to and signed the disbursement agreement on September 15, 2009, and received $198,817.30; he also agreed to dismiss his personal injury lawsuit with prejudice.

Afterward, Randell spoke to another lawyer, Donald MacPhail, about his case. Randell thought he was owed more money from Galbreath. Randell thought that the settlement had adversely affected his workers' compensation benefits and claimed that he was owed more money because he had a verbal agreement with Galbreath, prior to September 15, 2009, to pay him an additional $100,000. Randell acknowledged that he had hired MacPhail "to get more money" from the Galbreath

Law Firm. MacPhail testified that Randell had retained him to negotiate Randell's claims, but Randell later claimed that MacPhail was only his workers' compensation lawyer.

MacPhail spoke and corresponded with Galbreath and Dunbar, both of whom provided him with settlement offers in writing. Later, MacPhail and Randell met at Galbreath's office where MacPhail signed the Release, and Randell received $8,500 in checks from Galbreath and Dunbar. MacPhail testified at his deposition that he saw Randell sign the Release and that he gave Randell a copy of the signed Release, but Randell has denied that he signed the Release and denied that he received a copy of it. Afterward, Randell spoke to another lawyer, Burt Burnett, who then filed the instant suit against Galbreath and Dunbar.

II. *Standard of Review*

The movant for traditional summary judgment must show that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *See* TEX. R. CIV. P. 166a(c); *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009). A defendant who moves for traditional summary judgment must either negate at least one essential element of the nonmovant's cause of action or prove all essential elements of an affirmative defense. *Randall's Food Mkts., Inc. v. Johnson*, 891 S.W.2d 640, 644 (Tex. 1995). Once the defendant establishes a right to summary judgment as a matter of law, the burden shifts to the plaintiff to present evidence raising a genuine issue of material fact. *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678–79 (Tex. 1979); *Plunkett v. Conn. Gen. Life Ins. Co.*, No. 11-13-00129-CV, 2015 WL 3484985, at *4 (Tex. App.—Eastland May 29, 2015, pet. denied) (mem. op.).

We review summary judgment motions with a well-settled, multifaceted standard of review. *Kemp v. Jensen*, 329 S.W.3d 866, 868 (Tex. App.—Eastland 2010, pet. denied). Summary judgments are reviewed de novo. *Travelers Ins. Co. v.*

Joachim, 315 S.W.3d 860, 862 (Tex. 2010). To determine if a fact question exists, we must consider whether reasonable and fair-minded jurors could differ in their conclusions in light of all the evidence presented. *Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 755 (Tex. 2007); *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). We view evidence in a light most favorable to the nonmovant and resolve doubts in its favor, crediting evidence favorable to that party if reasonable jurors could and disregarding contrary evidence unless reasonable jurors could not. *Mayes*, 236 S.W.3d at 756; *Nixon v. Mr. Prop. Mgmt.Co.*, 690 S.W.2d 546, 548–49 (Tex. 1985).

If differing inferences may reasonably be drawn from the summary judgment evidence, a summary judgment should not be granted. *Nixon*, 690 S.W.2d at 549. The movant's own evidence may establish the existence of a genuine issue of material fact on the plaintiff's claim. *Johnston v. Vilardi*, 817 S.W.2d 794, 796–97 (Tex. App.—Houston [1st Dist.] 1991, writ denied). In addition, issues that an appellate court may review are those the movant actually presented to the trial court. *Travis v. City of Mesquite*, 830 S.W.2d 94, 100 (Tex. 1992). When the trial court's judgment does not specify the grounds upon which it relied for its ruling, the judgment must be affirmed if any of the theories advanced are meritorious. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001); *Carr v. Brasher*, 776 S.W.2d 567, 569 (Tex. 1989).

III. *Analysis*

Randell asserts that, because he presented evidence that he did not sign the Release, he raised a question of material fact on whether he had released his claims. He also asserts that the trial court could not have granted summary judgment on the ground that he gave MacPhail actual or apparent authority to sign the Release because Galbreath and Dunbar did not advance that ground in their motion and

adduced no evidence to support it. Because the resolution of the second issue is dispositive, we begin there.

A. Issue Two: Randell cloaked MacPhail with actual authority to negotiate a settlement on his behalf and apparent authority to sign the Release that settled all of his claims against Galbreath and Dunbar.

In his second issue, Randell asserts that Galbreath and Dunbar did not assert actual or apparent authority as a ground for summary judgment and adduced no evidence to support that ground. We address each argument in turn.

1. Galbreath and Dunbar pleaded their affirmative defenses of actual and apparent authority and moved for summary judgment on those grounds.

Randell asserts that the affirmative defenses of actual and apparent authority were not before the trial court. Rule 166a of the Texas Rules of Civil Procedure governs summary judgment procedure before the trial court. Under Rule 166a, a trial court cannot grant summary judgment for a reason that the movant does not present to the trial court in writing. TEX. R. CIV. P. 166a; *see also City of Houston*, 589 S.W.2d at 677. On October 3, 2011, Galbreath and Dunbar answered Randell's lawsuit and asserted the affirmative defense of release; they later supplemented their answers and asserted the defenses of actual and apparent authority. On November 8, 2011, Galbreath and Dunbar filed a motion for summary judgment with evidence. Later, they filed a supplemental motion for summary judgment with additional evidence and asserted that they had proven actual and apparent authority as a matter of law because Randell had retained MacPhail to negotiate a settlement of his claims against them. They also asserted that Randell had given actual and apparent authority to MacPhail to sign the Release in return for the $8,500 payment to Randell.

Later, on August 18, 2014, Galbreath and Dunbar filed a second supplemental motion with evidence. Their counsel sent two notices, one on August 28, 2014, and

a second on September 5, 2014, that notified Randell that the summary judgment motion would be heard on September 29, 2014. On September 29, 2014, the trial court held a hearing on the motion for summary judgment and the supplements. Because Galbreath and Dunbar's motion and two supplemental motions were filed well before the summary judgment hearing, which was held more than twenty-one days after notice had been provided to Randell, Galbreath and Dunbar's motion and supplemental motions were before the court. *See* TEX. R. CIV. P. 166a; *City of Houston*, 589 S.W.2d at 677. We overrule the first part of Randell's second issue and now analyze whether the summary judgment evidence conclusively established that he gave MacPhail actual or apparent authority to negotiate a settlement and sign the Release.

2. Randell gave MacPhail actual and apparent authority to negotiate and settle his claims against Galbreath and Dunbar and to sign the Release on his behalf.

In the second part of his second issue, Randell asserts that Galbreath and Dunbar adduced no evidence that he gave MacPhail actual or apparent authority to negotiate and settle his claims and sign the Release. Generally, a court will indulge every reasonable presumption to support a settlement agreement that is made by a duly employed attorney. *Ebner v. First State Bank of Smithville*, 27 S.W.3d 287, 300 (Tex. App.—Austin 2000, pet. denied) (citing *Webb v. Webb*, 602 S.W.2d 127, 129 (Tex. Civ. App.—Austin 1980, no writ); *Cleere v. Blaylock*, 605 S.W.2d 294, 296 (Tex. Civ. App.—Dallas 1980, no writ)). "However, when the evidence reveals that the attorney did not have the client's authority to agree, the agreement will not be enforced." *Id.* (citing *Cleere*, 605 S.W.2d at 296; *Kelly v. Murphy*, 630 S.W.2d 759, 761 (Tex. App.—Houston [1st Dist.] 1982, writ ref'd n.r.e.) (although attorney is presumed to be acting within authority given by client, presumption is rebuttable); *Sw. Bell Tel. Co. v. Vidrine*, 610 S.W.2d 803, 805 (Tex. Civ. App.—Houston [1st

Dist.] 1980, writ ref'd n.r.e.) ("mere employment of counsel does not clothe the counsel with authority to settle the cause without specific consent of the client")).

We note that there are two types of authority: actual and apparent. *Id.* "Actual authority is authority that the principal intentionally conferred on the agent or allowed the agent to believe was conferred." *Id.* (citing *Currey v. Lone Star Steel Co.*, 676 S.W.2d 205, 209–10 (Tex. App.—Fort Worth 1984, no writ)). "Apparent authority exists when conduct by the principal leads a reasonable third party to believe that the agent has the authority that he purports to exercise." *Id.* (citing *Biggs v. U.S. Fire Ins. Co.*, 611 S.W.2d 624, 629 (Tex. 1981)).

To establish such authority, the principal must make some manifestation to the agent (actual authority) or to a third party (apparent authority) that the principal is conferring such authority. *Id.* (citing *F. M. Stigler, Inc. v. H.N.C. Realty Co.*, 595 S.W.2d 158, 163 (Tex. Civ. App.—Dallas), *rev'd on other grounds*, 609 S.W.2d 754 (Tex. 1980)). And in Texas, "[i]t is well settled that a party may clothe his attorney with actual or apparent authority to reach and sign a settlement agreement that binds the client." *W. Beach Marina, Ltd. v. Erdeljac*, 94 S.W.3d 248, 256 (Tex. App.—Austin 2002, no pet.) (citing *Williams v. Nolan*, 58 Tex. 708, 713–14 (1883); *Ebner*, 27 S.W.3d at 300; *Walden v. Sanger*, 250 S.W.2d 312, 316 (Tex. Civ. App.—Austin 1952, no writ)).

In this case, Randell testified in a disqualification hearing and in a deposition that was taken in two parts; he also filed an affidavit in opposition to the summary judgment motion. During the disqualification hearing, when he was asked if he had hired MacPhail to recover additional money from the Galbreath Law Firm that he thought he was entitled to, Randell answered, "Yes." He was also asked if it was correct that MacPhail was representing him when he was presented with the Release at Galbreath's office, and Randell answered, "Correct." When asked if it was correct

that the Release of the claims that MacPhail was pursuing on Randell's behalf was for claims against the Galbreath Law Firm, Randell answered, "Correct."

In Randell's deposition, when asked what MacPhail was authorized to do with respect to any claims that he had against the Galbreath Law Firm, Randell responded, "He was just seeking to get more money." When asked what did he authorize MacPhail to do in pursuing a claim for Randell to get more money, Randell said that MacPhail "was just going to check into it and see how much more money he -- that was owed to me." When asked if he authorized MacPhail to communicate with Galbreath and Dunbar with respect to claims that Randell had against them for services they provided in his personal injury lawsuit, Randell responded, "[MacPhail] was my workers' comp attorney and he was checking into it." Randell explained that, by "it," he meant, "To more money owed to me." Still later, Randell confirmed that he had previously been asked the following question and that he had provided the following answer:

> **Q.** . . . . My question: "You retained Mr. MacPhail to pursue a claim against the Galbreath Law Firm because you were dissatisfied with the representation received under the employment agreement that is Exhibit No. 1. Correct?"
>
> And your answer was?
>
> **A.** "**Correct**."

Randell said that he was asked by MacPhail to go to Galbreath's office on November 12, 2010, to discuss the situation—"[t]o see about money and go from there." With these statements by Randell, which are not contradicted by anyone else and are clear and unequivocal, we hold that MacPhail had received authority to negotiate, or at least Randell had led him to believe that he could negotiate, a proposed settlement of Randell's claims with Galbreath and Dunbar. *See Williams*, 58 Tex. at 713–14; *Erdeljac*, 94 S.W.3d at 256. We now turn to the issue of whether Randell authorized MacPhail to sign the Release on Randell's behalf.

Randell maintains that he did not sign the Release and did not authorize MacPhail to sign it. Apparent authority is created by written or spoken words or conduct by the principal to a third party. *Walker Ins. Servs. v. Bottle Rock Power Corp.*, 108 S.W.3d 538, 550 (Tex. App.—Houston [14th Dist.] 2003, no pet.). "A party seeking to charge a principal through the apparent authority of an agent must establish conduct by the principal that would lead a reasonably prudent person to believe the agent had the authority it purported to exercise." *Id.* at 550–51.

Although Randell stated that he did not sign the Release and that he did not know how his signature got on the Release, his signature is not required where his lawyer has signed on his behalf. *See In re R.B.*, 225 S.W.3d 798, 803 (Tex. App.—Fort Worth 2007, no pet.). And where a principal acts without ordinary care, apparent authority may arise when the principal's lack of ordinary care clothes the agent with indicia of authority. *Ebner*, 27 S.W.3d at 301 (citing *NationsBank, N.A. v. Dilling*, 922 S.W.2d 950, 952–53 (Tex. 1996)).

Randell does not dispute that he and MacPhail met at Galbreath's office on November 12, 2010, to discuss the situation; in Randell's words, it was "to see about money and go from there." Randell confirmed that he and MacPhail met there for "negotiations" with Galbreath "to discuss quite a few of the things due me" and "checking as to what was owed to me." Randell said that, at Galbreath's office, MacPhail discussed "stuff" with Randell, then talked to Galbreath in his office, then talked to Randell again, and then talked to Galbreath some more.

Randell testified that he read the Release "fairly" carefully when he was at Galbreath's office. Randell said that MacPhail asked him to sign the Release on November 12, 2010. At that meeting, Randell said, "I told MacPhail if he had to have a signature on [the Release], he could sign it but I wasn't going to sign it." When asked if he had endorsed and cashed those checks, he replied, "Yes."

MacPhail said that he explained the settlement and the Release to Randell at the meeting, that both signed the Release and got copies of it, and that Randell took the checks. Randell denied this occurred but conceded that he had received from MacPhail three checks—one from Dunbar and two from Galbreath—that totaled $8,500 and that, later, he had endorsed and cashed the checks. We hold that Galbreath and Dunbar proved as a matter of law that Randell retained MacPhail to negotiate a settlement of his claims against them. We also hold that Randell gave MacPhail actual authority, or at least acted with such a lack of ordinary care that he clothed MacPhail with an indicia of apparent authority, to sign the Release and settle Randell's claims in return for $8,500 in checks from Galbreath and Dunbar.

3. Where Randell's later affidavit directly contradicts his earlier testimony without explanation or states conclusions of law, his affidavit is insufficient to create a fact question.

We will now address Randell's affidavit. A party cannot file an affidavit to contradict his own deposition testimony, without any explanation for the change in the testimony, in an attempt to create a fact issue and avoid summary judgment. *Farroux v. Denny's Rests., Inc.*, 962 S.W.2d 108, 111 (Tex. App.—Houston [1st Dist.] 1997, no pet.); *see Pando v. Sw. Convenience Stores, L.L.C.*, 242 S.W.3d 76, 79–80 (Tex. App.—Eastland 2007, no pet.). When (1) the affidavit is executed after the deposition and (2) there is a clear contradiction on (3) a material point (4) without explanation, the "sham affidavit" doctrine may be applied and the contradictory statements in the affidavit may be disregarded. *Pando*, 242 S.W.3d at 79; *Del Mar College Dist. v. Vela*, 218 S.W.3d 856, 862 n.6 (Tex. App.—Corpus Christi 2007, no pet.). This court and several of our sister courts have held that such an affidavit merely creates a sham issue and cannot be used to avoid summary judgment. *Pando*, 242 S.W.3d at 79–80; *see Cantu v. Peacher*, 53 S.W.3d 5, 10–11 (Tex. App.—San Antonio 2001, pet. denied); *Eslon Thermoplastics v. Dynamic Sys., Inc.*, 49 S.W.3d

891, 901 (Tex. App.—Austin 2001, no pet.); *Burkett v. Welborn*, 42 S.W.3d 282, 286 (Tex. App.—Texarkana 2001, no pet.); *Farroux*, 962 S.W.2d at 111.

"If a party's own affidavit contradicts his earlier testimony, the affidavit must explain the reason for the change." *Farroux*, 962 S.W.2d at 111. Without an explanation of the change in the testimony, we assume that the sole purpose of the affidavit was to avoid summary judgment. *Pando*, 242 S.W.3d at 79–80; *Farroux*, 962 S.W.2d at 111. Because Randell did not explain why his affidavit directly contradicted his earlier testimony that MacPhail had the authority to negotiate a settlement of his claims with Galbreath and Dunbar, we cannot hold that the affidavit created a material fact issue. *See Pando*, 242 S.W.3d at 79–80.

In addition, even if we are incorrect on the "sham affidavit," Randell cannot use conclusory statements or statements that state legal conclusions to create a fact question. *See Tex. Div.-Tranter, Inc. v. Carrozza*, 876 S.W.2d 312, 314 (Tex. 1994). "A conclusory statement is one that does not provide the underlying facts to support the conclusion." *Massey Operating, LLC v. Frac Tech Servs., LLC*, No. 11-11-00118-CV, 2013 WL 870688, at *3 (Tex. App.—Eastland Mar. 7, 2013, no pet.) (mem. op.) (quoting *Brown v. Brown*, 145 S.W.3d 745, 751 (Tex. App.—Dallas 2004, pet. denied); *Eberstein v. Hunter*, 260 S.W.3d 626, 630 (Tex. App.—Dallas 2008, no pet.); *Brown*, 145 S.W.3d at 751 (quoting *Choctaw Props., L.L.C. v. Aledo I.S.D.*, 127 S.W.3d 235, 242 (Tex. App.—Waco 2003, no pet.)). Affidavits containing unsubstantiated factual or legal conclusions that are not supported by the evidence are not competent summary judgment proof because they are not credible or susceptible to being readily controverted. *Gail v. Berry*, 343 S.W.3d 520, 522 (Tex. App.—Eastland 2011, pet. denied) (citing *Ryland Grp., Inc. v. Hood*, 924 S.W.2d 120, 122 (Tex. 1996)); *see Bastida v. Aznaran*, 444 S.W.3d 98, 105 (Tex. App.—Dallas 2014, no pet.) (citing *Ryland Grp.*, 924 S.W.2d at 122); *Eberstein*, 260 S.W.3d at 630. Randell's statements in numbered sentences "3," "4," and "5"

in his affidavit contained conclusory statements or conclusions of law about the scope of MacPhail's representation, the effect of MacPhail's signature on the Release, and the effect of the Release; those statements are not competent summary judgment evidence. *See Ryland Grp.*, 924 S.W.2d at 122; *Carrozza*, 876 S.W.2d at 314; *Massey Operating*, 2013 WL 870688, at *3; *Gail*, 343 S.W.3d at 522.

B. The Release signed by MacPhail was a broad-form release of all Randall's claims against Galbreath and Dunbar.

Galbreath and Dunbar assert that the Release signed by MacPhail was a full and complete release of all claims Randell had against them. They assert that Randell, in return for the $8,500 payment, gave up all claims he had against them that involved or arose out of their representation of him in the personal injury lawsuit. As we explain below, we agree.

A release is a contract, and its construction is governed by the general rules that relate to the construction of contracts. *Loy v. Kuykendall*, 347 S.W.2d 726, 728 (Tex. Civ. App.—San Antonio 1961, writ ref'd n.r.e.). "If the parties reach a settlement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner *as any other written contract.*" *Erdeljac*, 94 S.W.3d at 255–56 (emphasis in original) (quoting TEX. CIV. PRAC. & REM. CODE ANN. § 154.071(a) West 2011). When construing a written contract, the primary concern of a court is to ascertain the true intentions of the parties as expressed in the instrument. *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983). If the written instrument is worded so that it can be given a certain or definite legal meaning or interpretation, then the instrument is not ambiguous and the court will construe the contract as a matter of law. *Id.* at 393.

In Texas, in order to release a claim, the releasing instrument must mention the claim to be released. *Victoria Bank & Trust Co. v. Brady*, 811 S.W.2d 931, 938 (Tex. 1991). "[A]ny claims not clearly within the subject matter of the release are

not discharged." *Id.* at 938. However, although releases often consider claims existing at the time of execution, a valid release may also encompass unknown claims and damages that develop in the future. *Keck, Mahin & Cate v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 20 S.W.3d 692, 698 (Tex. 2000).

The Release in this case specifically provides as follows:

> [Randell and Galbreath and Dunbar] previously entered into an agreement(s) . . . in connection with [Randell's] claim for damages resulting from injuries he sustained in a motor vehicle accident that occurred on or about December 16, 2005, and [Randell] alleges that [Galbreath and Dunbar] have breached the agreement(s) and that [Randell] has been damaged thereby, all of which is hereinafter referred to as the "Occurrence."

The Release also provides that "[Randell] desires to dispose of the controversy and all disputes arising from the Occurrence" and that Randell accepted $8,500 "in exchange for a full, complete and unconditional release of all claims held or owned by [Randell] as a direct or indirect result of the Occurrence." The Release provides that Randell "does hereby fully, completely and unconditionally release, acquit, and forever discharge" Galbreath and Dunbar. The Release further provides that all claims arising from "all actions, causes of action, liens, claims or demands of any nature whatsoever" are released. The Release also provides that all claims to recover damages "pursuant to a contract, statute (state or federal) or under common law, attorney's fees, and any other form or category of damage, loss or expense of any nature whatsoever" are released. The Release further provides in bold capital letters that Randell released any and all claims and causes of action of whatever nature that he had or could have had against Galbreath and Dunbar. The Release contains the following acknowledgment:

> THE RELEASING PARTY UNDERSTANDS AND AGREES THAT BY SIGNING THIS DOCUMENT, HE IS RELEASING ANY AND ALL CLAIMS AND CAUSES OF ACTION OF WHATEVER NATURE THAT HE MAY NOW OR HEREAFTER OWN OR HOLD

> AGAINST THE RELEASED PARTIES TO RECOVER FOR ANY DAMAGE, LOSS, EXPENSE OR INJURY OF ANY NATURE WHATSOEVER WHICH HAS RESULTED, OR WHICH MAY IN THE FUTURE RESULT, FROM THE OCCURRENCE, EVEN IF SUCH DAMAGE, LOSS, EXPENSE OR INJURY WAS CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE (WHETHER SOLE, CONCURRENT, ORDINARY AND/OR GROSS), MALICE OR OTHER ACTS OR OMISSIONS (WRONGFUL OR OTHERWISE) OF THE RELEASED PARTY.

Until set aside, a release that is valid on its face is a complete bar to any later action based on matters covered by the release. *Deer Creek Ltd. v. N. Am. Mortg. Co.*, 792 S.W.2d 198, 201 (Tex. App.—Dallas 1990, no writ); *Schmaltz v. Walder*, 566 S.W.2d 81, 83 (Tex. Civ. App.—Corpus Christi 1978, writ ref'd n.r.e.). Once a movant properly pleads and proves the affirmative defense of release, the burden shifts to the nonmovant to produce evidence that raises a fact issue as to a legal justification for setting aside the release. *See Sweeney v. Taco Bell, Inc.*, 824 S.W.2d 289, 291 (Tex. App.—Fort Worth 1992, writ denied); *McCall v. Trucks of Texas, Inc.*, 535 S.W.2d 791, 794 (Tex. Civ. App.—Houston [1st Dist.] 1976, writ ref'd n.r.e.).

In this case, Randell argued that he did not sign the Release and that he did not authorize MacPhail to sign the Release on his behalf, but as we previously explained, his signature was unnecessary where he had given MacPhail either actual or apparent authority to sign the Release. Because Randell advances no other evidence of a legal justification to set aside the Release, we hold, as a matter of law, that the Release is valid and enforceable. *See Schmaltz*, 566 S.W.2d at 83. In addition, we hold that the Release includes a broad-form release that releases all of Randell's claims against Galbreath and Dunbar. *See Keck*, 20 S.W.3d at 698 (holding broad release of claims attributable to professional services extended to malpractice claims even though recitals primarily addressed unpaid fees); *Mem'l*

Med. Ctr. of E. Tex. v. Keszler, 943 S.W.2d 433, 434–35 (Tex. 1997) (holding that, where parties agreed to release all claims related to corrective action taken by hospital against physician "and any other matter relating to [physician's] relationship with [hospital]," all claims relating to physician's relationship with hospital were released); *Shanley v. First Horizon Home Loan Corp.*, No. 14-07-01023-CV, 2009 WL 4573582, at *11 (Tex. App.—Houston [14th Dist.] Dec. 8, 2009, no pet.) (mem. op.) (holding release language "all possible claims and causes of action of every kind and character related in any manner to [the Contract, the loan documents, or the Property or the transaction the subject thereof]" that "relate to, are based on, arise out of, or are in any way connected with any acts of Lender" released all claims against the lender); *Vera v. North Star Dodge Sales, Inc.*, 989 S.W.2d 13, 18 (Tex. App.—San Antonio 1998, no pet.) (holding that language "any and all liability regarding the purchase of a 1993 Mazda," where purchase terms were not satisfied, released claims on vehicle purchase, unlawful debt collection, conversion, and wrongful repossession claims).

C. Conclusion

Galbreath and Dunbar have pleaded, adduced summary judgment evidence, and proven as a matter of law their affirmative defense of release because Randell granted MacPhail the authority to negotiate a settlement and sign the Release, which was a broad-form release of any and all claims, in return for a payment of $8,500 from Galbreath and Dunbar. We hold that the trial court did not err when it granted their summary judgment motion. We overrule Randell's second issue on appeal. In light of this resolution of the second issue, which is dispositive, we need not address Randell's first issue on whether he signed the Release.

IV. *This Court's Ruling*

We affirm the judgment of the trial court.

MIKE WILLSON

JUSTICE

June 22, 2017

Panel consists of: Wright, C.J.,
Willson, J., and Bailey, J.